FOOD FOR THOUGHT…What about?

A Parallel Socio-Cultural Evolution of Ombudsing?

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I. A. Prologue

"It is the valuable contributions of pioneer ombudsmen, ombuds scholars, and those who have walked within the profession before me that have laid the foundation of understanding from which I draw meaning, purpose, guidance, appreciation, and inspiration. The elders pass along fire from the torch they've kept lit for thirty years and light my torch, offering support, mentorship, and guidance. I begin to carry on their tradition. A tradition marked by a passionate pursuit of a profound sense of life's purpose as a peacemaker-part of which has to do with ombudsing and ombuds scholarship, and part of which entails a life lived outside of the office.

Inspired by the mentorship of Stanley V. Anderson, it is my hope to continue on with his tradition of fostering a greater understanding of ombudsing through research and writing for journal publications" (Kelly, 2003).

I.B. Catch-up with ombudsmania[1]

Over the past forty years, the field of ombudsing has grown faster than ombuds scholars have been able to keep up with. As a consequence, the art and science of ombudsing as defined through ombuds scholarship has yet to reach its fullest potential. Although great strides have been made with regard to understanding the history and dissemination of the concept in early modern ombuds history, as well as the nature of these ombudsing systems/schemes[2], much work remains. In the late 60's and early 70's the ombuds concept was adopted at an astonishing rate by non-governmental institutions. The phenomenon was coined ombudsmania by ombuds scholar Stanely V.

[1] Ombudsmania is a term created by Stanley V. Anderson. The term was associated with a period of ombuds history where the concept spread at an extremely rapid rate across the globe, and began to be implemented in sectors outside of the 'traditional' government setting (Anderson, 2003).

[2] Ombudsing "system/scheme" refers to the sum total of all theoretical elements associated with an individual ombuds operation.

Anderson (Anderson, 2003). Anderson likened the ombuds diversification unto "garden variety" ombuds (Anderson, 2002).

This work marks a response to the perceived need for ombuds and ombuds scholars to play some serious "catch-up" with ombudsmania in order to bring an understanding of ombuds systems/schemes and the dissemination of the concept up to date. After digesting a sizeable portion of existing ombuds literature[3] I was struck by a profound sense of what seemed to be missing in the theoretical mix of ombudsing given the existing body of knowledge. In *Reflections of a Budding Ombuds: The First Two Years* (Kelly, 2002) a section appears that outlines some of the elements one "hungers" for after attempting to satiate one's 'ombuds understanding' appetite by digesting a gallimaufry of existing ombuds literature (Kelly, 2003).

This work presents the development, description, and illustrative use of two neoteric theories that were developed in response to seeking to satiate this personal ombuds understanding appetite. This theory builds upon the foundation of understanding cultivated by first generation ombuds scholars. The theories are entitled *The Parallel Socio-Cultural Evolution of Ombudsing Systems/Scheme*[4], and *The Basic Ombuds Model, and its Set of Basic Ombudsing Principles/Considerations. The Parallel Socio-Cultural Evolution of Ombudsing Systems/Schemes* theory suggests that the fundamental (quintessential[5]) components of ombudsing systems/schemes are universal: hence the probability that the ombuds concept did not evolve from the singular Swedish source (popular view), but rather has developed in parallel in several cultures. *The Basic Ombuds Model* theory breaks the complexity of ombudsing systems/schemes down into four fundamental components: the complaint handler, the

[3] To obtain a good overview with regard to what exists in way of ombuds scholarship/literature visit the Stanley V. Anderson Program & Library and the Ombudsman's Reading and Resource Room located online at the UCSB Ombuds Office website. These resources do not articulate all ombuds scholarship that presently exists, but the resources do provide a good snapshot of available resources. The UCSB Ombuds Office web address is: <http://www.sa.ucsb.edu/ombuds/ > (9 Oct. 2003)

[4] "ombudsing system/scheme" refers to the complex whole of an ombudsing entity that is comprised of the sum total of its known/unknown interacting, interrelated, and/or interdependent elements. Scheme is used in conjunction with system in that this work is written for an international community of ombuds. Scheme is a term utilized in the United Kingdom when defining ombuds entities.

[5] Quintessential Ombuds refers to stripping the modern ombuds system/scheme of its complexity, and breaking it down to its fundamental elements, its essence, its purest expression.

complainant (and the potential of an associated “respondent”, or source of complaint), a moral/spiritual tenet, and an entity. The first four components are identified as elements that can be held ceteris paribus[6], and the fourth element is identified as the variant one uses as a foundation for studying the different forms of ombudsing systems/schemes. *The Basic Ombuds Model* can be likened to the bare bones of an ombudsing system/scheme. *The Set of Basic Ombudsing Principles/Considerations* comprises the totality of the other elements that puts the life into the model. *The Set of Basic Ombudsing Principles/Considerations* goes hand in hand with the *Basic Ombuds Model.* They comprise the elements one would assess when attempting to determine how ombudsing systems/schemes differ within different institutional settings. It is my impression that these tools will not only enable ombuds to work toward playing serious “catch-up” with ombudsmania, but will lead to the development of ombuds theory suited for teaching in higher education institutions; provide the greater ombuds community with the tools necessary to effectively assess, evaluate, and refine the ongoing ombuds categorization work spearhead by the American Bar Association; and will set the stage for intensive study in the area of ombuds diversification/evolution. Additionally, it is my hope that the work will facilitate reduction of exclusionary tendencies established in the early 70’s with regard to what constitutes a ‘real’ ombuds. Cultivation of a common theoretical language readily understood, accepted, and taught by ombuds scholars, ombuds practitioner/scholars, and ombuds practitioners, holds the potential to enhance ombuds practices, and to improve communication amongst ombuds, thereby contributing to the betterment of humanity by refining the peacemaking process of ombudsing.

[6] The term ceteris paribus signifies “With all other factors or things remaining the same” (Dictionary.com, 2003). The term is utilized her to indicate that the Basic Ombuds Model has expressed existing ombuds theory in a new way that enables scholars to “hold constant” certain components while measuring/quantifying/qualifying how ombuds systems/schemes vary when considering the one fundamental component that differs between schemes. The subset of considerations to evaluate when studying the “garden variety” ombuds system/schemes is defined as The Set of Basic Ombudsing Principles/Considerations. The Set is defined in greater detail in “The Nuts & Bolts of Ombuds Theory” (Kelly, 2003).

I. THE PARALLEL SOCIO-CULTURAL EVOLUTION OF OMBUDSING SYSTEMS/SCHEMES

The *Parallel Socio-Cultural Evolution of Ombudsing Systems/Schemes* theory emerged as a by-product of research conducted to establish a theoretical base upon which to build my ombuds practice. The specific area of focus from which this theory surfaced was the area of ombuds history. After digesting existing literature pertaining to ombuds history, I allowed curiosity to be my guide, searched for the origins of ombudsing, and began to conduct the research necessary to seize an understanding of the pre-history evolution of the ombuds concept. In considering the pre-history evolution of ombudsing possibilities, I stripped the modern ombudsing system/scheme of all of its complexities and searched for its quintessential essence as defined by its fundamental form. In that the art/science of ombudsing is a peacemaking process, I began to search for the origins of ombudsing by searching for the origins of conflict itself. I reworked the refined portrait of the modern ombuds, by softening, distilling, and smudging the edges of the information. With use of broad gesture strokes I re-expressed the modern as primitive to create a form conducive to the task at hand. The gesture strokes I placed on the blank canvas included the presence amidst conflict (impartial third party); a moral/spiritual tenet; the use of language for the arts of storytelling, asking questions, and listening; the presence of an entity; and the presence of complaint handlers/complainants (which implies the existence of a respondent). Utilizing common sense, and confirming common sense via discourse with colleagues, I drafted a sense of the order in which these elements might have emerged as humanity evolved. Through use of existing theories pertaining to the origins of conflict, the origins of language, and the origins of ethics, I was able to confirm my educated

guesses, satiate my curiosity, and began to fill in the blanks of history with educated/informative speculation. What emerged from the pre-history meditation/consideration, was an awareness that the quintessential form of ombudsing is universal, and that as humanity evolved, ombudsing evolved with it, resulting in the occurrence of a *Parallel Socio-Cultural Evolution of Ombudsing Systems/Schemes* (as opposed to the concept disbursing and evolving from a single country/single office, e.g., Sweden). Following is a synopsis of the research that led to the development of this theory, and preliminary findings that support the likeliness of such an occurrence. The information is not meant to be conclusive, but rather, is intended to introduce nascent theory to the greater ombuds community, to lay the groundwork for further research, and to set the stage for *The Basic Ombuds Model.*

A. PRE-HISTORY OMBUDSING: THE QUINTESSENTIAL OMBUDS[7]

1. The Presence Amidst Conflict

In searching for the roots of the ombuds system/scheme one searches for the roots of conflict and finds it to be older than the human species itself. Where there is conflict there is opportunity for conflict resolution and this too predates humankind. This notion is supported by contemporary studies of our closest relatives, the primates. Research conducted by Frans de Waal, presented in his book *Peacemaking Among Primates* suggests that making peace is as natural as making war (Waal 1989, 7). On the benign edge of the spectrum primate disputes involve threats, chasing, and screaming. More vicious encounters result in high-intensity attacks with fierce biting. On the most brutal edge of the warring spectrum primate conflict produces severed digits, genital mutilation, and even

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death (Waal 1989, 73-75). It is comforting to note that nature has also built in a balance. "Peacemaking" in primates is evidenced by reconciliatory actions. Chimpanzees "kiss and make up" (Waal 1989, 42), rhesus monkeys brush against each other in contact passes (Waal 1989, 115), and stump-tailed monkeys "hold-bottom" (Waal 1989, 163-165). Other reconciliatory actions include the gesture of an outstretched hand (Wall 1989, 213), hugging (Waal 1989, 41), grooming (Waal 1989, 64), and sexual contact (Waal 1989, 149-154). One chimpanzee, a dominant male, was documented illustrating the act of third party intervention by standing in-between screaming parties until calm was restored (Waal 1989, 64). He was a peacemaker-a natural presence amidst conflict[8] providing me with an illustration of what the earliest form of ombudsing might have looked like in the unwritten annals of humanity's history.

2. The Arts of Listening, Storytelling, Asking Questions

As human kind evolved it follows that he/she built upon the natural impulse for peacemaking. The art of peacemaking evolved and diversified to produce the plethora of dispute resolution that exist today. Forms such as: arbitration, mediation, minitrials, negotiation, facilitation, conciliation, fact finding, "talking stick" council circles, restorative justice, ombudsing, and Ho'oponopono[9] (CPR 2002, Huna.com 2003, Mediate.ca 2002, Morris 2002, Reiger 2002). Research in the field of anthropology, although not conclusive, indicates that the evolution of language occurred relatively early in humanity's history, and consequently, given

[8] The phrase "presence amidst conflict" signifies an early form of the neutral/impartial third party present in alternative dispute resolution systems.

[9] Ho'oponopono is an ancient alternative dispute resolution process developed by the indigenous peoples of the Hawaiian Islands. It means "to make right".

the quintessential components of ombudsing, endowed humanity with the capacity to take the next ombuds evolutionary step.

Following are a few examples drawn from several anthropologists' work that links the development of language to initial impulses within the unwritten annals of humanity's history. The examples are provided as background information and to support the suggestion that development of language was the most probable next evolutionary step for the ombuds concept.

a. Dean Falk

Due to common ancestry, anthropologist Dean Falk utilizes primates as a model for developing an understanding of the earliest forms of language. Falk suspects that human mothers turned to right brain activity (the creative hemisphere) to communicate with their babies, and humming, as an early form of language, became a way of fostering closeness to their offspring (Volkert 2002).

b. Robin Dunbar

In addition, the language evolution theory of Robin Dunbar, also indicates that language may have developed relatively early in the evolution process. Dunbar suggests that language/gossip developed as a more efficient social grooming substitute functioning to strengthen social bonds as well as to increase cooperation in large groups (Dunbar 1996).

c. Terrence Deacon

Biological anthropologist, Terrence Deacon's work, presented in his book *The Symbolic Species,* suggests that language is an innovation which occurred when humans became hunters, and that language and the brain coevolved. Language became a way to establish social contracts fostering stability in family and group structures setting the stage for two million years of evolutionary adaptation (Deacon 1997).

With the development of language, the logical next evolutionary step for the *presence amidst conflict* would be to add the *arts of storytelling, listening, and asking questions* to the mix of pre-history ombudsing technique. At this phase in pre-history, prior to the creation of law, prior to the development of spiritual/moral precepts, prior to the development of organizations, it is conceivable that the earliest forms of ombudsing were akin to mediation. That is to say, the presence amidst conflict began to listen to disputants' stories, began to ask questions, and facilitated resolution.

3. Ethics

Given the two remaining components of the quintessential form of ombudsing, ethics, and entities, an obvious next evolutionary step emerges. Ethics, which is viewed as the pulse of the ombuds practice by some scholars, is the most likely component to have developed in pre-history ombudsing. The Encyclopedia Britannica defines ethics as "The discipline of philosophy concerned with what is morally good and bad, right and wrong; also system or theory of moral values"

(Encyclopedia Britannica 2003). The American Heritage Dictionary defines morality as: "1.The quality of being in accord with standards of right or good conduct. 2 .A system of ideas of right and wrong conduct: religious morality…"(American Heritage Dictionary 2000).

Although there is not a consensus amongst scholars pertaining to the origins of ethics, some theory suggests that ethics may have evolved out of our animal social instincts (Kropotkin, 1998), hence the likelihood of ethics evolving prior to formal entities. Doris Schroeder, in her article "Evolutionary Ethics", summarizes key figures and key concepts pertaining to the evolution of ethics. In her work she explains that "Evolutionary Ethics" explores the relationship between natural selection and behavior. Morality is presented as an automatic social evolution as opposed to the result of divine revelation or development and utilization of reasoning faculties. (Schroeder 2002). Schroeder states that morality is "interpreted as a useful adaptation that increases the fitness of its holders by providing a selective advantage" (Schroeder 2002). Schroeder points out, that Edward Wilson, the innovator of sociobiology, presents theory that harmonizes with "Evolutionary Ethics". Schroeder summarizes some of Wilson's writing as follows:

"The hypothalamus and limbic system … flood our consciousness with all the

Emotions – hate, love, guilt, fear, and others – that are consulted by ethical

> Philosophers who wish to intuit the standards of good and evil. What, we are then compelled to ask, made the hypothalamus and the limbic system? They evolved by natural selection. That simple biological statement must be pursued to explain ethics" (Schroeder 2002).

Although caveats exist in relation to these theories, enough information is gathered to suggest that concepts of morality became woven into emerging culture as a consequence of several factors including: the development of humanity's reasoning capabilities, cultivation of an awareness of (and communion with) expressions of the spirit, and humanity's evolving social and biological expressions. At this point, it is conceivable that the next evolutionary step taken by the pre-history ombuds was to add another tool to his/her toolkit: the awareness of what constitutes an ethical (or fair) outcome/process, and the ability to use reasoned persuasion to advocate for such an outcome.

4. Entities/Organizations, Complainants, Complaint Handlers

By default, the final component of the quintessential ombuds expression to emerge would be the organizational element. As humankind began to create formal systems to organize religious, cultural, political, legal, business, and other operations, humanity began to have relationships with these entities. Humankind began to interact with these entities, and undoubtedly encountered situations that led to the formulation of complaints. Citizens voiced their complaints becoming the quintessential ombuds "complainant". Consequently, the need arose for someone such as the presence amidst conflict questioning, listening to stories,

and advocating for a fair outcome to handle complaints, to become a complaint handler completing the quintessential ombuds portrait. It is at this point that the edges between pre-history and existing history soften, and one is able to resort to other than educated speculation with regard to the evolution of the ombuds concept.

B. WRITTEN 'QUINTESSENTIAL OMBUDS' HISTORY

1. Early Forms

Drawing from existing ombuds literature one learns that complaint handlers appeared in many different societies:

- Egyptian kings utilized complaint handlers in their courts (Caiden, MacDermott, Sandler 1983, 9)
- Moses appointed grievance officers to handle the complaints of Hebrews (Caiden 1983, 9)
- Two censors in the Roman Republic received complaints of alleged maladministration (Ferris, Goodman, Mayer 1980, 3)
- In the Middle Ages intermediaries between the public and businesses, churches, and government were common (Caiden, MacDermott, Sandler 1983, 9)

- In medieval Europe an intercessor's office was often provided by the Christian church to intercede between subject and prince and between serf and feudal lord (The Victorian Ombudsman, 2003)
- In medieval Spain, the kingdom of Aragon had a position called the *Justicia de Aragon.* (Lundvik 1982, 85)
- In the Ts'in dynasty, China created the *Control Yuan* (Lundvik 1982, 85)
- Although I've yet to assess information pertaining complaint handling within indigenous cultures, one author points out that "Navajos have used peacemakers for centuries…", and "Many African tribes have shamans who intervene when disputes arise" indicating that complaint handlers undoubtedly existed among the indigenous cultures (Elkins-Elliot, 2003).

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Unfortunately, when attempting to acquire an in-depth understanding of the aforementioned complaint handling systems I was not able to locate more than a sentence or two about each within existing ombuds scholarship. It is my hope, in the future, with guidance from my mentors, to resume the search. It is my belief that gathering such information will contribute to fostering a better understanding of the evolution of ombudsing. One complaint handling form I was able to gather more than one or two sentences of information about was the form with Islamic roots.

2. Islam

The Prophet of Islam, Mohammed, developed a system of accountability known as 'Hisab'. Mohammed, as well as his companions, held both their public and private

lives accountable to the community. (Pakwatan.com, 2003). After the death of Mohammed the Second Caliph, Omar (634-644) built upon this work by introducing specific administrative checks and balances. Omar allowed citizens to complain to him. As the notion of complaint handling developed, citizens later complained to a specially created complaint-handling agency. In addition, Caliph Omar created the institution of Muhtasib. It was within the framework of 'Hisab' that the Muhatsib had complete independence, was a dispute settler, and functioned as the guardian of public morals (Pickl, 1987). At this point we draw close to what the majority of scholars perceive as the origin and birth of the modern ombuds system/scheme. The writings of Viktor Pickl, and Ibrahim al-Wahab suggest that an Islamic system of justice may be the root source for the modern ombuds model: a point that is not broadly accepted (and perhaps known), by ombuds scholars, and ombuds practitioners (al-Wahab 1979, 24; Pickl 1987).

3. Sweden

In 1709 King Charles XII of Sweden was defeated by the Russians and fled to Turkey. He remained in self-exile until he left Turkey in 1714 (Svantesson 1998). At the time there was a Turkish office of Chief Justice called "Quadi al Qudat" that was (and still is) finely integrated within the Islamic system of justice. The Quadi al Qudat served to protect the public from injustice and officials' power abuse. Ombuds scholar Viktor Pickl suggests that King Charles XII had knowledge of the office. It follows that knowledge of this office could very well have influenced King Charles decision making process when problem solving for the unrest and disorder that had broken out in his absence (Pickl, 1987).

During King Charles XII absence unrest and disorder broke out in Sweden. In 1713 King Charles XII ordained the creation of an office to aide in the restoration of order (Pickl 1987). At this time he had been abroad for 13 years. The office was to be headed by a person with the title of The Highest Ombudsman whose duty was to ensure officials carried out their obligations and obeyed the law. The power held by the Highest Ombudsman was the right to prosecute officials found at fault (Gottehrer 2000, Swanström 2001).

The position of the Highest Ombudsman was a prototype for the Justitieombudsman (JO) created in 1809. In 1809, when Swedish King Gustavus Aldophus was dethroned, constitutional reform took place resulting in a new constitution "based on the principle of balance of power between the King and Riksdag[10]" (Swanström 2001). The constitution allowed for the Ricksdag to elect a man of known legal ability and outstanding integrity to the office of JO ('High Ombudsman') (Swanström 2001). The JO was "to act as an agent of justice" to "see after the interests of justice in affairs between the government and its citizens." by overseeing the activities of the government and public administration (The American Heritage Dictionary 2000).

4. Korea and Pakistan

As I began to explore the suggested Islamic roots of ombudsing, I uncovered some intriguing information which fused with the research I had conducted to date, to

[10] Riksdag means National Assembly or Parliament (Sebok, 2003), for more information please visit the following website: http://www.riksdagen.se/english/work/uppgifter.asp (28 Sep. 2003).

confirm my suspicion of the occurrence of a *Parallel Socio-Cultural Evolution of Ombudsing Systems/Schemes*. I found modern ombudsing/systems schemes with existing self-perceptions that indicate roots other than Sweden as the originator of their country's ombuds concept. My initial response to these perspectives was that modern ombudsing systems/schemes familiar with modern ombuds expressions/theory, and attuned to respective countries' histories, undoubtedly have a keen awareness of respective ombuds concept origins, hence a reliable and trustworthy source of information.

On the Korean "Office of the Investment Ombusman" website, information pertaining to ombuds conceptual origins dates back to 1402. This history is provided within the office's public response to one of the most frequently asked questions, what is an ombudsman?

> *"The concept of the ombudsman in Korea can be traced back to as early as the 15th century with King Tejong. In 1402, the king set up the "shinmungo" or drum of justice, outside the palace, and anyone who wished to report an injustice could do so by hitting the drum. One of the king's secretaries would then come out and hear the citizen's grievance. Anyone within the community seeking to report an injustice would come to the outside of the palace and hit the drum. This would signal for one of the king's secretaries to come out and hear the citizen's grievance."*
>
> (Office of the Investment Ombudsman 11 2003)

The second country, which currently recognizes a different root for their present ombuds institution, is Pakistan. The Pakistan website, Pakwatan.com, has published the following information pertaining to the root of the Ombudsman ('Wafaqi Mohatsib').

> "*The Concept Mohtasib (Ombudsman) is an ancient Islamic concept and many Islamic States had established the office of Mohtasib to ensure that no wrong or injustice was done to the citizens. The Prophet of Islam (peace be upon him) introduced the system of `Hisab' or accountability. He as well as his companions presented their public and private life and conduct for accountability. Thus a great institution emerged and spread across the globe…"* (Pakwatan.com 2003)

5. Recent History

While gathering information about the history of ombuds organizations, I found evidence within the field of newspaper ombudsing that suggests that a *Parallel Socio-Cultural Evolution of Ombudsing* may have occurred in modern times. Takeshi Maezawa's article, "The controversy over the origins and functions of ombudsmanship" addresses a debate pertaining to the "first" newspaper ombudsman scheme (Maezawa 03). The article reveals that The Yomiuri Shimbun Ombudsmen Committee's (Japan) self-perception with respect to its origins dates back to 1951 (prior to the spread of the Swedish ombuds concept). In addition, mention is made of the work of a Japanese journalist, Asahi Shimbun in 1922. Shimbun, inspired by a system called the Bureau of Accuracy and Fair Play (established in New York City in July 1913), decided to set up a committee that would try to "be fair and make everything fair" with regard to the publics

concerns with regards to errors being made by newspapers pressed by deadlines (Maezawa, 03). This information reveals that the self-perception of the Japanese includes newspaper ombudsmen history that predates the ombudsmania that occurred in the late 60's and early 70's. Ombudsmania is a term that was first introduced by Stanley V. Anderson (in Anderson's recollection, Anderson, 2003) in his work Ombudsman Papers: American Experience and Proposals (Anderson, 1969). The term ombudsmania is utilized to refer to a period in ombuds history when the concept began to spread across the globe at a very rapid rate (late 60's, early 70's).

Although preliminary findings indicate that it is quite likely that a *Parallel Socio-Cultural Evolution of Ombudsing Systems/Schemes* has indeed occurred, the findings are by no means conclusive. The nascent theory is presented as a point of departure. It is intended to spark interest and dialog about the theory, which will hopefully lead to extensive research in the area of the emergence, evolution, and disbursement of the ombuds concept. In addition, the simplification process of the modern ombuds system/scheme associated with the development of *The Parallel Socio-Cultural Evolution of Ombudsing Systems/Schemes* sets the stage for the development of a second nascent theoretical tool: *The Basic Ombuds Model.*

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